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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,927	04/12/2002	Caroline Maher	9052-97	3206
20792	7590	06/07/2004	EXAMINER	
MYERS BIGEL SIBLEY & SAJOVEC			LAYNO, CARL HERNANDZ	
PO BOX 37428				
RALEIGH, NC 27627			ART UNIT	PAPER NUMBER
			3762	9

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/980,927 <i>Carl H. Layno 6/4/04</i>	MAHER ET AL. Art Unit 3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 November 2001.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-107 is/are pending in the application.
- 4a) Of the above claim(s) 1-55 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 56-61 and 66-70 is/are rejected.
- 7) Claim(s) 62-65 and 71-107 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 15 November 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>6/8</u> .	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

1. Acknowledgment is made of applicant's preliminary amendment which was received by the Office on April 12, 2004. This document has been made of record in the file as Paper No. 7.
2. Claims 1-55 are canceled. Claims 56-107 are canceled.

***Priority***

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file, as Paper No. 2. Applicant's claim for priority filing under 35 U.S.C 371 as a national stage application of PCT/GB00/01841, filed May 15, 2000, is also acknowledged.

***Information Disclosure Statement***

4. Acknowledgment is made of applicant's Information Disclosure Statements (PTO-1449) which were received by the Office on November 15, 2001 and April 12, 2002. These documents have been made of record in the file as Paper Nos. 3 and 8, respectively.

***Drawings***

5. Applicant's formal drawings have been approved by the Examiner.

***Specification***

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6. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. **Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading.** If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

7. In this case, the section headings for sections (b) thru (h) are missing.

8. In addition, this application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 56-60 and 70 are rejected under 35 U.S.C. 102(b) as being anticipated by Barker '219 or Barker '228 (Applicant's prior art).

The Barker '219 patent describes a head mounted facial nerve stimulator (Figs. 1-5) comprising applicant's claimed features of six "body contactor"/electrode structures **12,13,14,15,16,17**, (Fig. 5) attached to a "body unit"/rigid frame **11** by "linking means"/mounting arms **35,36,37,38,39,40** (Figs. 2 and 5). Each mounting arm is bendable to enable various electrode positions to contact different facial contours (col. 2, lines 70-74). A control unit comprising timer **33** with control knob **39** (Fig. 2) and rheostats **50,51,52** control the flow of electricity from a power source **34** to the electrode structures.

In regard to claim 70, the "linking means"/mounting arms **35,36,37,38,39,40** are constructed of ductile metal wire, preferably steel (col. 3, lines 5-7).

The Barker '228 patent, cited by the applicant as prior art, also describes a head mounted facial nerve stimulator (Figs. 1-5) similar to that of the '219 patent including "body contactor"/electrode structures **26,26a,28,28a,30,30a** (Figs. 1 and 2), attached to a "body unit"/rigid eyeglasses frame **11** by deformable "linking means"/wire mounting arms **32,33,34,32a,33a,34a** (Fig. 2), and whose output is controlled by a control unit circuitry **52,53,56,54** (Fig. 5).

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11. Claims 56-61 and 66-70 are rejected under 35 U.S.C. 102(b) as being anticipated by Jankelson '614 (Applicant's prior art).

The Jankelson '614 patent, cited by the applicant as prior art, describes a head mounted facial stimulating apparatus (Figs. 1 and 2) including "body contactor" electrodes **5,6** attached to an adjustable "body unit" headband **1** via "linking means"/pivoting support members **8,9**, respectively. A pulse generating/control unit **11** (Fig. 1) enables user output control.

In regard to claim 61, the housing of each electrode is filled with a pad of electrically conductive material **28** and a moisture retentive material **29** (Fig. 3 -- col. 4, lines 31-37).

In regard to claims 66-70, applicant's attention is directed to Figs. 3 and 4, which show these features.

#### *Allowable Subject Matter*

12. Claims 62-65 and 71-107 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Conclusion*

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (703) 308-3694. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every other Friday between 9AM and 5PM. A voice mail or E-mail message ([carl.layno@uspto.gov](mailto:carl.layno@uspto.gov)) may be left if desired.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (703) 308-5181. All faxed correspondence should be sent to the Office's new official FAX number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (703) 305-7520.

Carl N. Layno

CARL LAYNO  
PRIMARY EXAMINER

CHL  
6/3/2004